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In re Application of
COTTRELL *et al*
U.S. Application No.: 10/560,725
PCT No.: PCT/US2004/020562
Int. Filing Date: 25 June 2004
Priority Date: 25 June 2003
Attorney Docket No.: IF03001USU
For: SECURE NETWORK PRIVACY
SYSTEM

DECISION

This decision is in response to applicants' petition under 37 CFR 1.47(a) filed 02 March 2007.

BACKGROUND

On 08 May 2007, a decision dismissing applicants' petition under 37 CFR 1.47(a) was mailed. Applicants were given two months to respond.

On 02 March 2007, applicants filed a response which was accompanied by, *inter alia*, a petition to revive under 37 CFR 1.137(b) with fee; a renewed petition under 37 CFR 1.47(a); a supplemental declaration of Mariana Paula Noli; and exhibits A - G.

DISCUSSION

Petition to Revive Under 37 CFR 1.137(b)

Applicants' petition to revive under 37 CFR 1.137(b) is hereby **GRANTED** as follows:

A renewed petition under 37 CFR 1.47 was submitted which is as an appropriate reply to the decision mailed 08 May 2007. The petition fee for a small entity has been paid. Applicants make the required statement pursuant to 37 CFR 1.137(b)(3). A terminal disclaimer is not required.

Accordingly, all requirements under 37 CFR 1.137(b) are satisfied.

Petition Under 37 CFR 1.47(a)

In the original petition under 37 CFR 1.47(a) filed 02 March 2007, applicants claimed that five of the six named inventors refused to cooperate in the above-identified application. The petition was dismissed because applicants failed to provide evidence showing that the 37 CFR 1.47(a) applicants attempted to contact the nonsigning inventors to determine their intent with regards to the subject application.

In the renewed petition, the 37 CFR 1.47(a) applicants submitted a declaration of two of the five previous nonsigning inventors. Regarding the remaining three nonsigning inventors, applicants claim that they cannot be located after a diligent effort. Section 409.03(d) of the MPEP discusses the requirements needed to show that an inventor cannot be located and states, in the relevant section:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made . . .

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts. It is important that the statement contain facts as opposed to conclusions.

Applicants provided a supplemental declaration by Ms. Marianna Noli who details the efforts used to locate the nonsigning inventors. These efforts consisted of contacting their client and receiving possible email addresses and telephone numbers for the three nonsigning inventors. Ms. Noli states that she sent the emails and called the numbers searching for the nonsigning inventors. These efforts proved fruitless as no response was received. No other evidence was presented listing further steps taken to locate the nonsigning inventors.

This is insufficient. The 37 CFR 1.47(a) applicants must also conduct some type of search of the missing inventors using public records such as the internet/telephone records, Lexis etc. to meet the "diligent effort" standard noted in the MPEP. Documentary evidence of such a search should be submitted in any renewed petition.

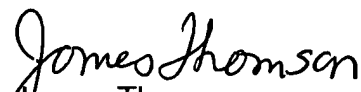
For the reason noted above, item (2) of 37 CFR 1.47(a) is still not yet satisfied.

CONCLUSION

Applicants' renewed petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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